FILED.
NOV 11 1889
JAMES. H. McKENNEY.
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

No. 88.

PETER RAIMOND, PLAINTIFF IN ERROR,

versus

THE PARISH OF TERREBONNE, DEFENDANT IN ERROR.

ALFRED GOLDTHWAITE,
Attorney for Raimond, Plaintiff in Error.

T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

No. 88.

PETER RAIMOND, PLAINTIFF IN ERROR,

versus

THE PARISH OF TERREBONNE, DEFENDANT IN ERROR.

This suit was brought by Raimond to recover the principal of bonds aggregating twenty-eight hundred dollars, due July 1st, 1884, and coupons attached thereto, at the rate of eight per centum per annum, payable semi-annually, January 1st, and July 1st, from and including January 1st, 1877, together with eight per centum per annum interest on the twenty-eight hundred dollars, the principal, and five per centum per annum interest, on each and every coupon, from maturity of bonds, and each and every coupon, respectively. He averred that he acquired the bonds before maturity and made them a part of his petition.

On the back of each is printed the Act No. 74 of

the Acts of the General Assembly of the State of Louisiana, of the year 1874. Under said Act No. 74, the said bonds and coupons were issued by the Parish of Terrebone pursuant to a loan, and the faith and credit of the Parish of Terrebonne were pledged. Transcript, pp. 1, 2.

A specimen bond and coupon together with the Act No. 74, written or printed on the back of the bond, are to be found in the Transcript, pp. 2, 3, 4.

Raimond "acquired the bonds and coupons from William O'Hern in the early part of March, 1884; he paid thirty cents for every dollar represented in said bonds; he did not pay for them in money nor by a check." "To the fifth interrogatory he answered: He is the absolute and full owner of the bonds sued on by him, that no one else has any interest, direct or indirect, in said bonds, or in the proceeds of any judgment that may be recovered on them." Transcript, p. 8.

William O'Hern, from whom he bought them, was a member of the firm of M. Shelley & Co. "In November or December, 1878, or early in the year 1879, Thomas A. Cage, a planter in the Parish of Terrebonne, one of the persons who signed said bonds, and being the Thomas A. Cage mentioned in said Act No. 74, pledged these bonds to the firm of M. Shelley & Co., of which he, the said O'Hern, was a member, as security for the advances made, and to be made by said firm to said Cage to conduct his plantation; that

the said firm of M. Shelley & Co. retained possession of these bonds under said pledge until about April, 1883, when said Cage made and executed to said firm (then in liquidation) a power of attorney authorizing the members of said firm, viz., M. Shelley and William O'Hern, to sell the said *scrip* at public or private sale as might appear to them best, and to apply the proceeds of sale to the satisfaction, wholly or in part, as the case might be, of the judgment against him.

At that time he knew of the decision of the case of State ex relatione Rabasse vs. Police Jury of Terrebonne Parish. He sold the bonds to Peter Raimond, in the month of March, 1885." (Evidently the year 1884 was intended.) "O'Hern retained the bonds until they were delivered to counsel for Raimond." Transcript, pp. 8-16.

To the petition a plea to the jurisdiction of the Court was filed, pp. 5, 6. And subsequently, by consent, and on motion of the counsel for the parties respectively, it was ordered by the Court that the plea be overruled, p. 9.

The answer set up four defenses:

1. That said bonds were not issued by the authority of the Police Jury and one commissioner, as provided for and contemplated in the Act of the Legislature under which said bonds purported to have been issued, to wit., Act No. 74 of the Acts of the General Assembly of Louisiana for the year 1874.

2. That no public ordinance, as required by law,

was ever passed by the Police Jury authorizing the issuance of said bonds, nor was any ordinance ever passed determining the amount of bonds issued, or to be issued, and fixing the rate of taxation necessary to redeem the bonds and pay the interest thereon, as required by the said Act of the Legislature.

3. That no public ordinance, as required by law, was ever passed by the Police Jury of said parish determining a period when the said bonds should be due and payable, and prescribing the form of said bonds; that all of the resolutions of the Police Jury of said parish respecting said bonds are null, because no bonds of the parish were in existence at the time of the passage of the resolutions; that the bonds sued on were put on the market in fraud, and were taken by the plaintiff at his own risk and peril, and that no scrip of any kind was ever delivered to the Police Jury in exchange for the same.

4. That the plaintiff is not a *bona fide* holder for value, and that he acquired the same after their invalidity and nullity had been declared by the Supreme Court of the State of Louisiana, and was bound by the said decision, p. 10.

There was a plea of prescription of five years to all coupons which matured on or before January 1st, 1880, pp. 10, 11.

Upon the trial, after some evidence had been offered, the Court stated to counsel engaged in the case that the question involved in the cause was one of law,

the construction of a municipal statute, or the construction of a contract, under the general commercial law, and that the Court wanted time to consider. Thereupon, counsel agreed, at the bar and in open Court, to waive the intervention of a jury. Whereupon, by consent of parties, one of the jurors was withdrawn and the panel discharged, and the cause continued, to be heard thereafter by the Circuit and District Judges, sitting *en banc*. This was on the 24th of March, 1886. Subsequently, the cause was *argued* by counsel on the 2d of April, 1886, and submitted, pp. 11, 12.

On the 8th of April judgment was rendered, p. 13. This judgment was rendered upon the assumption that the cause had been submitted to the Court on the facts set forth in the opinion by Mr. Justice Manning, in Rabasse vs. Parish of Terrebonne, 30 La. An. Rep. 287; p. 13. A motion for a new trial was made and denied, p. 12.

At a later date, June 12th, counsel agreed upon a statement of facts, and submitted it to the Court to find conclusions of law thereupon, and to finally sign the judgment of April 8th.

This statement of facts and conclusions of law will be found at pp. 15, 16, 17, 18, 19, 20, 21, 22, 23.

It is apparent from the Record that the pathway was not open and clear.

The conclusions of law found by the Court were—

I. That the construction given to the Statute, au-

thorizing the issue of bonds for the debts of said parish, should, in this cause, and as to the points determined in said cause by the Supreme Court of this State, *i. e.* Rabasse vs. The Parish, should be deemed and held as the construction of a municipal law and not as that of a commercial law, and is therefore binding upon this Court; and, further, that if said construction should be deemed and held as that of a commercial law, then the Court adopts it as a just and proper inference from the facts of the case.

II. That all the coupons maturing prior to 9th of May, 1880 (the service of the citation herein having been made on May 9th, 1885), are prescribed, and action upon the same is barred.

III. That the petition should be dismissed, and that there be judgment for defendant.

II.

It is proper for the Court to observe that the case of the State ex rel. Rabasse vs. Police Jury of the Parish of Terrebonne, 30 An. 287, was a proceeding for the writ of mandamus to force the collection of a tax. There had been no suit at law to determine the liability of the Parish upon the bonds or coupons.

This is a suit at law upon an *assumpsit*.

In the case of Heine vs. The Levee Commissioners, 19 Wallace at p. 657, Mr. Justice Miller said: "It has been decided in numerous cases founded on the refusal to pay corporation bonds, that the appropriate

proceeding was to sue at law, and by a judgment of the Court establish the validity of the claim and the amount due; and by the return of an ordinary execution, ascertain that no property of the corporation could be found, liable to such execution, and sufficient to satisfy the judgment. Then if the corporation had authority to levy and collect taxes for the payment of that debt, a mandamus would issue to compel them to raise by taxation the amount necessary to satisfy the debt."

In Louisiana, the proceeding by mandamus is broader than in most the States. It is not altogether a means of enforcing judgments.

"It is an order issued in the name of the State, by a tribunal of competent jurisdiction, and addressed to an individual or corporation, a court of inferior jurisdiction, directing it to perform some certain act belonging to the place, duty or quality with which it is clothed." Rev. Code of Practice, Art. 829.

It is given as a remedy to enforce the performance of duties. State ex rel. DeLeon vs. City of New Orleans, 34 An., at p. 483; State ex rel. Bauman vs. Judge, 38 An. 43.

It must be a duty, and certain or plain, to warrant its issuance.

In the case of Rabasse vs. Police Jury, 30 An. 287, the Police Jury denied the liability, and questioned the validity of the bonds.

The remedy by mandamus was not appropriate as

soon as the answer appeared. No one would contend that the proceeding by mandamus was the proper one to get the Police Jury to ACKNOWLEDGE the debt.

The issue, in that case, was whether it was the duty of the Police Jury, the plain duty, the certain duty of the Police Jury, to levy and collect the tax. The answer of the Supreme Court of Louisiana was that it was not.

The issue, in this case, is whether the parish owes the debt represented by the bonds and coupons. There is no tax or writ asked for.

It is well to observe that the Supreme Court of Louisiana does not declare that Act No. 74, the Act under which these bonds were issued, was in anything unconstitutional. They are careful not to pass upon it. Its validity is not attacked anywhere in the pleadings or evidence submitted in this record.

III.

The Act No. 74 was approved March 23d, 1874. "The commissioners named in the Act formally organized in April, and published a notification to all holders of parish warrants, scrip or other claims, to present them to the Board for inspection. They received the scrip." I quote from Mr. Justice Manning's Statement of Facts, 30 An., at p. 289. They were by the Act No. 74 vested "with full power to examine and determine upon the validity of any and all outstand-

ing claims, obligations, or any kind or character of indebtedness against the Parish of Terrebonne." Sec. 1.

Mr. Justice Manning says that they issued bonds to the amount of over fifteen thousand dollars, and destroyed the scrip. The Board had the right to reject any scrip, and the holder was not concluded by their judgment. He still could appeal to the courts. Section 10.

Destruction of the scrip, after the issuance of bonds, ought to be construed into acceptance and recognition, and doubtless was so looked upon at the time. If not so, Act No. 74 was a delusion and a snare to entrap the holders of scrip.

The Police Jury was composed of four members and a President. Mr. Justice Manning tells us that "a majority was three." Mr. Justice Manning says that the Board of Commissioners issued the bonds; that they usurped the functions of the Police Jury. With great respect, we submit that the facts admitted and established do not bear him out in his conclusions. The bonds were to be signed by "at least a majority of the members of the Police Jury of said parish," and one member of said Board of Commissioners, to be elected by said Board. Section 3, Act 74.

The law required the one Commissioner to be elected, or designated. The law did not require the Police Jury to elect or designate three of its members who were to sign the bonds, but it did require that

"at least a majority" of the Police Jury should sign the bonds.

Moreover, by Section 7, it required the Clerk of the Police Jury of said Parish to keep a well bound book in which he should register the number, date and amount of each bond issued under the provisions of the Act and to whom issued.

By Section 6 it provided that all costs and expenses incurred in the issuance of said bonds was to be paid by the Police Jury of said Parish.

The opinion of Mr. Justice Manning, 30 An. 287, and the statement of facts signed by counsel with Exhibits A and B, establish that the Commissioners did their full duty, no dereliction is charged to them. They may have done more than they were required to do, but not less. The delinquency of the Police Jury is that they did not pass some public ordinance issuing the bonds.

On the 1st of May, 1874, T. A. Cage and W. H. Keys were appointed a committee of two, to secure blank bonds for the purpose of bonding parish debt according to Act No. 74.

On May 23, they requested the Tax Collector to turn over to the Parish Treasurer $250 for licenses as soon as collected, and said money to be turned over to the committeee appointed by the Police Jury to purchase blank bonds for the purpose of bonding the Parish debt.

The Commissioners had organized in April, and by

June 22, when they elected one of their number to sign the bonds in conjunction with "at least a majority of the Police Jury," they had inspected, scrutinized and passed upon the scrip submitted to them. There was nothing in the Act 74 which required the Police Jury to pass any ordinance fixing the time the bonds were to run. There was provision for registration. The bonds were printed, paid for, and ready to be turned over to those lawfully entitled to them.

On July 1st the bonds were signed by a majority of the Police Jury and the designated, or elected, Commissioner, and signed by the Clerk of the Police Jury and duly registered. In addition was the seal of the Clerk of the District Court of said Parish.

The judicial functions had been performed by the Board of Commissioners.

The duty devolving upon the Police Jury was to issue the bonds to the proper parties and keep a record thereof.

There was a substantial compliance with the Statute in every particular.

Furthermore, at a meeting of the Police Jury on the 31st of July, 1874, a tax of six hundred and sixty-five dollars on the assessment rolls of 1873 was levied, and the Tax Collector was directed to collect it.

In August the Tax Collector reported difficulty in collecting and suggested that the assessment be made for the next year.

In March, 1875, the Police Jury levied a tax of one

mill on all the taxable property of the Parish to meet the interest and take up one-tenth of said bonds.

In August, 1875, the Police Jury repudiated all the scrip, and obligations of the Parish outstanding, and which had not been exchanged, funded into bonds.

In May, 1876, there was further legislation by the Police Jury upon the subject of taxation to pay the interest and one-tenth of the bonds.

The legal opinion of the Parish Attorney was sought and given in the same month.

In 1877, the Finance Committee of the Police Jury reported the total issue of the bonds under the Act No. 74, to be $15,675 and " of this amount $925 was cancelled by order of the Court and $1450 has been redeemed or taken as taxes, leaving a balance of bonds outstanding of $13,300." Transcript, pp. 19, 20, 21 and 22.

After the issuance of $15,675 of bonds the Police Jury actually cancelled by order of Court and redeemed $2375 of the bonds and paid the coupons upon the outstanding bonds to January, 1877.

The facts admitted and established in the record show a ratification. Eureka Company vs. Bailey Company, 11 Wallace, p. 491; Supervisors vs. Schenck, 5 Wall. 772.

We understand the rule to be: If the corporation had the power to issue bonds originally, which was exercised in an irregular or improper manner, but subsequently taxes were levied for the express purpose

and applied to the payment of bonds or interest, then the ratification will be complete. If the corporation did not have the power to issue the bonds, then payment of bonds or interest is not ratification, for the reason that the issue was null and invalid. Loan Association vs. Topeka, 20 Wallace, 655.

There was perfect acquisescence on the part of the Parish authorities for over two years. See Rogers vs. Burlington, 3 Wallace, 654; Bissel vs. Jeffersonville, 24 Howard, 300; Meyer vs. City of Muscatine, 1 Wallace, 384.

In the case of Gelpcke vs. City of Dubuque, 1 Wallace, at pp. 206-7, Mr. Justice Swayne, the organ of the Court, said: "We shall never immolate truth, justice, and the law, because a State tribunal has erected the altar and decreed the sacrifice." See also Grand Chute vs. Winegar, 15 Wallace, 355; Lynde vs. The County, 16 Wallace, 6; Railroad Co. vs. County of Otoe, 16 Wallace, 667; Chambers, Co. vs. Clews, 21 Wallace, p. 321; Thompson vs. Lee County, 3 Wallace, 327; Commissioners of Johnson County vs. January, 94 U. S. 202; Commissioners of Douglas County vs. Bolles, 94 U. S. 104, 105; Town of Coloma vs. Eaves, 92 U. S. 484, 488.

The Court will observe that it is established as a fact, in the opinion by Mr. Justice Manning, that scrip or obligations of the parish were delivered to

the Board of Commissioners under Act 74, and bonds exchanged therefor.

The case is similar to that of Little Rock vs. National Bank, 98 U. S. 308.

IV.

It is to be observed that Raimond, or any one from whom he acquired title and possession, had not been a party to the suit of Rabasse vs. Parish of Terrebonne, 30 An. 287, or privy thereto. The bonds and coupons sued on in this suit are not the same bonds or coupons. This suit is not between the same parties or for the same matter. We conceive that there is no estoppel or bar to our suit. Moreover, Raimond was a purchaser for value before maturity. O'Hern had taken them as a pledge for a preëxisting debt from Cage. Cromwell vs. County of Sac, 94 U. S. 351; Cromwell vs. County of Sac, 96 U. S. 51.

V.

One of the conclusions found by the Court is:

"That the construction given to the Statute authorizing the issue of bonds for the debts of said Parish should in this cause, and as to the points determined in said cause by the Supreme Court of this State, *i. e.*, Rabasse vs. The Parish, be deemed and held as the construction of a municipal law, and not as that of a commercial law, and is, therefore, binding upon this Court."

We have endeavored to show that nowhere in the case of Rabasse vs. Parish of Terrebonne, 30 An. 287, or in the pleadings in this cause, is the constitutionality of the Act 74, Pamphlet Acts 1874, questioned or disputed. The right of the Board of Commissioners appointed or designated by the Legislature to inspect and pass upon the scrip submitted is not denied. The right of the Police Jury to issue bonds in compliance with the Act 74 is not denied. As the case appears to us, it is not questioned that the Act was a proper Act, but that it was not lawfully carried out or executed.

We submit that it was literally followed and obeyed, and that, if there was anything defective or irregular in its interpretation or execution by the Police Jury of the Parish of Terrebonne, the defect or irregularity was cured and the contract with the holders of the bonds was ratified by the levying of the tax for two years or more and payment of interest and the redemption of bonds. Bonham vs. Needles, 103 U. S. 648.

We submit that under often repeated decisions in this Court, these bonds and coupons were negotiable securities and governed by the general commercial law or law merchant.

We do not look upon this case as involving any statute of Louisiana, and that the Federal court as a matter of comity has to lean to, not to say follow, the case in the 30 An. 287.

As Mr. Justice Bradley said, in the case of Burgess vs. Seligman, 107 U. S., at p. 33, "The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to, that of State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws."

"As the very object of giving to the national courts jurisdiction to administer the laws of the State in controversies between citizens of different States was to institute independent tribunals which it might be supposed would be unaffected by local prejudice and sectional views, it would be dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication." See Canal Co. vs. Smith, 111 U. S. 556; Anderson vs. Santa Anna, 116 U. S. 356; Bolles vs. Bromfield, 120 U. S. 759.

VI.

In its conclusions of law the Court further found:

"That if said construction should be deemed and held as that of a commercial law, then the Court adopts it as a just and proper inference from the facts of the case."

What is adopted, it is presumed, is the judgment of the case of Rabasse vs. Parish of Terrebonne, 30 An. 287. The learned Judge thought it "a just and proper inference from the facts of the case."

As we have said above, we do not think that the

case in *assumpsit* ought to be controlled by the case for a mandamus. The Rabasse judgment is full of strong language and hard names. "Local prejudice and sectional views" are found in every line, and easily indicate the popular, not to say, judicial, excitement of 1876 and 1877 in Louisiana.

VII.

It is conceded that the coupons maturing prior to May, 1880, are prescribed under the decision of Amy vs. City of Dubuque, 98 U. S. 470.

In concluding we submit that Act No. 74, Acts of Louisiana for 1874, was nothing more or less than a funding Act. The Board of Commissioners were authorized to finally determine upon the obligations of the Parish so far as the Parish was concerned, and bonds of the Parish, of the kind described and provided for in the Act, were to be exchanged therefor.

Respectfully submitted,

ALFRED GOLDTHWAITE,

Attorney for Raimond, Plaintiff in Error.

ASSIGNMENT OF ERRORS.

1. The Circuit Court erred in finding that the construction given to the statute authorizing the issue of bonds for the debts of said Parish should in this cause, and as to the points determined in said cause by the Supreme Court of the State of Louisiana, Rabasse vs. Police Jury of Parish of Terrebonne, be deemed and held as the construction of a municipal law and therefore binding upon the Circuit Court.

2. The Circuit Court erred in adopting the judgment of the Supreme Court of Louisiana in the case of State ex rel. Rabasse vs. Police Jury of Parish of Terrebonne, 30 An. 287, as a just and proper inference from the facts of the case.

3. The Circuit Court erred in its conclusion of law that the petition should be dismissed, and giving judgment for defendant.

4. The Circuit Court erred in not giving judgment for the plaintiff as prayed for under the facts admitted and established except as to the prescribed coupons.

ALFRED GOLDTHWAITE,
Attorney for Raimond, Plaintiff in Error.

APPENDIX.

NO. 74.] AN ACT

Creating a Board of Commissioners to examine and ascertain the valid outstanding indebtedness of the Parish of Terrebonne, and authorizing the Police Jury of said Parish to issue bonds to take up and fund the same.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That Henry C. Minor, P. E. Bryant, Frederick Marie, Thomas A. Cag[illegible], J. L. Belden, all of the Parish of Terrebonne, be and are hereby declared and constituted a Board of Commissioners, with full power to examine and determine upon the validity of any and all outstanding claims, obligations, or any kind or character of indebtedness against the Parish of Terrebonne, and to call upon all holders of said claims or indebtedness to present them for inspection within a time to be determined by said Board of Commissioners.

SEC. 2. *Be it further enacted, etc.*, That the Police Jury of said Parish, in conjunction with at least one member of said Board of Commissioners, to be elected by said Board, be and is hereby authorized and empowered to issue the bonds of said Parish, not to exceed twenty thousand dollars, payable to bearer, and bearing eight per cent. interest, said interest to be paid semi-annually, for the sole purpose of taking up said indebtedness after inspection and approval by said Board of Commissioners.

SEC. 3. *Be it further enacted, etc.*, That the bonds issued under the provisions of this Act shall be signed by at least a majority of the members of the Police Jury of said Parish, and one member of said Board of Commissioners, to be elected by said board as is provided in Section two of this Act, and shall be in denominations of twenty-five, fifty and one hundred dollars.

SEC. 4. *Be it further enated, etc.*, That the Police Jury of said Parish shall levy a tax sufficiently large to pay and redeem annually one-tenth of the bonds issued by virtue of this Act, and the interest accruing yearly on all the bonds issued under the provisions of this Act, said interest to be paid semi-annually and be represented by coupons attached to said bonds.

SEC. 5. *Be it further enacted, etc.*, That the ordinance or resolution of the Police Jury of said Parish, levying a tax and providing for the annual payment of one-tenth annually of the amount of bonds issued under this Act, and the interest, as provided in Section four of this Act, shall remain in full force until the final redemption of the principal and interest of all the bonds issued under the provisions of this Act.

SEC. 6. *Be it further enacted, etc.*, That all the costs and expenses incurred in the issuance of said bonds shall be paid by the Police Jury of said Parish.

SEC. 7. *Be it further enacted, etc.*, That the Clerk of the Police Jury of said Parish, shall keep a well bound book, in which he shall register the number, date and

amount of each bond issued under the provisions of this Act, and to whom issued.

SEC. 8. *Be it further enacted, etc.*, That the bonds issued under the provisions of this Act shall be receivable for Parish taxes and licenses for the Parish of Terrebonne.

SEC. 9. *Be it further enacted, etc.*, That all bonds paid and redeemed by the Parish Treasurer or received by him from the Tax Collector, in settlement of taxes or licenses, shall be immediately canceled by him, the Treasurer and the President of the Police Jury, with red ink.

SEC. 10. *Be it further enacted, etc.*, That this Act shall not be so construed as to deprive Courts of competent jurisdiction from adjudicating upon any claim which may be rejected by the Board of Commissioners created by this Act.

SEC. 11. *Be it further enacted, etc.*, That this Act shall take effect from and after its passage, and all laws or parts of laws in conflict or inconsistent with this Act shall be, and are hereby repealed.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.
(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.
Approved March 23, 1874.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
(Signed) P. G. DESLONDE,
Secretary of State.

SUPREME COURT OF LOUISIANA,

NEW ORLEANS, February, 1878.

No. 6914.

State ex rel. E. Rabasse vs. Police Jury of Terrebonne Parish.

Where an Act of the Legislature authorizes a parish to issue bonds for a certain purpose, in such form and denomination as the Police Jury of the Parish shall prescribe, the Police Jury must specially authorize the issue of the bonds, and the bonds must be signed by the person designated by the Legislature, and in default of this action of the Police Jury and this signature of the bonds, all bonds issued under color of said legislative Act are invalid.

When a law directs that certain bonds of a parish shall be signed by a majority of the members of its Police Jury, it means a majority of the members designated by the jury. It does not mean any majority of its members, not selected for the purpose by the jury.

Appeal from the Thirteenth Judicial District Court, Parish of Terrebonne, Beattie, J.

Thomas L. Winder, for relator and appellant.

L. F. Suthon, for respondents and appellees.

The opinion of the Court was delivered by

MANNING, C. J. The relator is the holder of certain instruments denominated bonds of the Parish of Terrebonne, amounting to four thousand seven hundred and

seventy-five dollars, with interest coupons attached. Having demanded payment of the over due coupons from the Parish Treasurer, and having been refused, he obtained this mandamus to the Tax Collector of that Parish to collect forthwith a tax sufficient to pay the past due interest, and that next falling due, and also one-tenth of the principal, in accordance with the provisions of the Act of March 23d, 1874, and of an Ordinance of the Police Jury of May 6th, 1876. He prayed further that the Police Jury be commanded to enforce that Ordinance, which he alleges is amendatory of one of July 31st, 1874, and another of March 9th, 1875.

The Tax Collector and the Police Jury answer, that the proceeding by mandamus is not permissible for the purpose of the relator, because the power conferred upon them by the Act of the General Assembly is to be exercised only at their discretion, and that they have not yet issued the bonds provided for in the Act—that the bonds sued on are null and void, and are not valid obligations of the Parish, for three reasons:

1. They were not issued by authority of the Police Jury and a Commissioner.

2. No ordinance was passed by the Jury authorizing their issuance, nor prescribing the quantity of them or fixing their denomination, nor prescribing the rate of taxation for their redemption and the payment of interest.

3. There was no ordinance prescribing the form of the bonds, nor when they should mature. There was judgment for the defendant below and the relator appeals.

An Act was passed by the Legislature creating a Board of Commissioners to examine and ascertain the valid outstanding indebtedness of the Parish of Terrebonne, and authorizing the Police Jury of that Parish to issue bonds to take up and fund the same. Acts 1874, p. 124. The Commissioners are named in the Act, and full power is conferred upon them to determine upon the validity of all outstanding claims against the Parish and to call on holders for their presentation. It is there provided that the Police Jury, in conjunction with one Commissioner, is empowered to issue bonds of the Parish, not exceeding twenty thousand dollars, interest to be paid semi-annually, for the sole purpose of taking up this debt.

Directions are given that these bonds must be signed by a majority of the Police Jury and one Commissioner, and their denomination is fixed. The Police Jury is required to levy a tax sufficient to redeem one-tenth of the bonds annually and the yearly interest, and the Ordinance of that body passed for that purpose is to remain in force until the redemption of all the bonds and the payment of all the interest. The closing proviso of the Act is that it is not to be so construed as to deprive courts of the power of adjudicat-

ing upon any claim which may be rejected by the Commissioners.

On the first of May following the passage of this Act, the Police Jury passed a resolution that a committee of two be appointed to obtain blank bonds for the purpose of bonding the Parish debt under it, and later $250 was appropriated to enable this committee to buy the blanks.

On July 31st, 1874, that body resolved there should be levied a tax of $665 to pay the semi-annual interest accruing on the bonds *which have been issued* under the Act of the Legislature. No Ordinance had been passed directing the issuance of the bonds, but only resolutions providing ways and means for getting the blanks which would be needed when the bonds were directed to be issued.

On March 9th, 1875, the jury resolved that a tax of one mill be levied for the purpose of meeting the interest, and redeeming one-tenth of the principal annually of the parish bonds, and on May 6th, 1875, an Ordinance was adopted, amendatory of this resolution, authorizing the levy of a tax of one mill on the dollar upon all taxable property to redeem annually one-tenth of the bonds issued under the Act of the Legisture, and a tax of one and a half mills to pay the interest annually accruing.

The Commissioners named in the Act met on June 22d, 1874, and elected one of their number to sign the bonds issued under its provisions. They had formally

organized in April, and had published a notification to all holders of parish warrants, scrip, or other claims, to present them to the Board for inspection. They received the scrip, issued bonds to the amount of over fifteen thousand dollars, and destroyed the scrip. The relator's bonds are a part of them thus issued. They were issued illegally. At no time did the Police Jury pass an Ordinance directing, authorizing or empowering the issuing of any bonds. The Act of March 23d, 1874, empowered the Police Jury to issue bonds of the Parish, and directing that a majority of the jurors and a Commissioner should sign them, and required the Jury to levy a tax to pay them and the annual interest. The Jury levied the tax, but did not authorize the bonds. It did not designate which of them should sign the bonds.

The Police Jury is a political entity, and acts as one being. When written instruments are to be signed by it, the president, or some member selected by it, act for the body. The Legislature had required that a majority should sign these bonds. A majority was three. The Jury should have designated the three. To hold that any three members of a Police Jury can bind the Parish by signing bonds in its name would be dangerous, to say nothing of its being illegal.

It is perfectly manifest that the Board of Commissioners usurped the functions of the Police Jury. The bonds are dated July 1, 1874, and are all payable ten years after date. The attempt to prove a meeting of

the Police Jury on that day was abortive. Marie, the Commissioner who signed the bonds, knew of no meeting on that day.

Kennedy, a member of the Jury, says there was, and he attended it on a summons from the President, and then recites what took place touching the bonds with a minute circumstantiality that exhibits an extraordinary memory for details. He was testifying more than three years after the meeting. We do not believe him. The Clerk of the Police Jury is not certain there was a meeting; yet his records contain no account of it. He does not even remember whether he was at it or not, and, on cross-examination, says he supposes the Police Jury was in session, because a majority of them were there. That was the day they were signing the bonds; Condon, Keys and Cage were the three that signed the bonds, and, of course, were there, but there is nothing to indicate Kennedy's presence, who remembered everything that was proposed and passed, while the Clerk says that he remembers no motions or resolutions, and certainly did not record any. The President of the Jury thinks there was a meeting of that body on 1st of July, but says a record was kept if there was a meeting; that he always appointed a deputy or *pro tem.* clerk when that officer was absent, and he required him to note the proceedings in the same way the Clerk did; and that if there was a meeting on that day the minutes will show it. The minutes contain no mention of it.

The Commissioners appear to have read the Act as conferring upon them the power of bonding what is called the indebtedness of the parish. The sequence of events shows this. The Police Jury obtained the blanks, and did nothing else until after the bonds were issued. On June 22d the Commissioners selected one of their number to sign the bonds. On July 1st he did sign them, and three members of the Jury signed also. On July 31st the Jury levied a tax to pay the interest accruing upon bonds already issued, as the resolution has it, and although minutes of every step taken by the Jury in its frequent meetings about that time relative to these bonds were preserved, nowhere do we find any trace of an ordinance authorizing and directing the issuance of any bonds; but on the contrary, the phraseology of all the resolutions shows that the members supposed that nothing was to be done but buy blanks for signature, and after they were signed and issued, to levy a tax to pay the interest and one-tenth of the principal. The bonds show this; they were all payable at one time, viz., ten years after date. The Jury were required to levy a tax to pay one-tenth each year, and they did it; and if they had had anything to do with ordering the bonds, they would have made one-tenth payable at the end of each of the ten years.

The duty of the Commissioners, under the legislative Act, was confined to the examination of claims and determination of their validity. They had noth-

ing else to do, except select one of their number to sign the bonds. But they appear to have received scrip, warrants, etc., and of their own motion exchanged bonds for them, which had been signed ready for their use. They did more; they destroyed the scrip. They had no right to destroy it. They should have examined it, and have passed upon its validity, and laid their report before the Police Jury, who alone had authority to exchange bonds for it.

We may remark here that it is unnecessary to say in this case whether the legislation can confer upon such a board the power so to "determine the validity" of alleged claims against a Parish as to create a binding and unassailable obligation upon it.

Judicial power can be exercised only by Courts mentioned in the Constitution. It is true, the Act provides that any person whose claim is rejected may invoke the adjudication of a Court. But the Police Jury and the taxpayers have rights also, and it would appear that when a claim was approved it was intended that the determination of the Board of Commissioners was in that case to be final. A tribunal that is clothed with such extraordinary power as to conclude one party absolutely by its decision, while the other is alone left free to demand a judicial investigation, may well provoke scrutiny of its origin, and the source of its authority.

Several decisions of the Supreme Court of the United States are cited by relator's counsel, and among

them is Commissioners of Knox County vs. Aspinwall, 21 Howard, 54. In these cases the bonds were issued by the proper authority, and in accordance with the Act of the Legislature. We have seen the bonds of the relator were issued without the authorization of the Police Jury, the body specially designated by the Legislature to issue them. Lisso vs. Parish of Red River, 29 Annual, 590.

It is unnecessary to consider the Bills of Exception to the admission or rejection of testimony, as without the testimony objected to by either side, the case is clearly with the respondent.

Judgment affirmed.

Office Supreme Court, U. S.
FILED.
NOV 11 1889
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 88.

PETER RAIMOND, PLAINTIFF IN ERROR,

versus

THE PARISH OF TERREBONNE.

Brief for Defendant in Error.

This case was tried in the court below without the intervention of a jury. The judgment recites that the cause was submitted to the court "on the facts set forth in the opinion of Mr. Justice Manning, in Rabasse vs. The Parish of Terrebonne, 30 An. 287, and the court, having considered said agreed statement of facts, and being advised in the premises, finds the issues of law raised by the pleadings in favor of defendant;" and judgment was rendered accordingly (R., p. 13).

The judgment was rendered on the 8th of April, and on the 12th of June following there was filed what purports to be an agreed statement of facts, signed by counsel for the parties, and supplemented by a finding of fact and conclusions of law by the court (R., pp. 15, *et. seq.*). The judgment was signed the same day.

If the recital in the judgment and the aforesaid statement so supplemented be considered as findings of fact, in the nature of a special verdict, they are insufficient to authorize a review of the judgment. The ultimate facts are not found. The judgment refers to the opinion in Rabasse vs. Parish of Terrebonne, for the facts, and in this aspect of the case is nothing more than a general verdict thereon. The agreed statement embodies the testimony in behalf of the plaintiff, and the facts *proved* by the

defendant, and "the court further finds that it was admitted on "the trial herein, that as far as the facts were stated in the case "of Rabasse vs Police Jury of Terrebonne Parish, in the opin- "ion of Mr. Justice Manning, reported in 30 La. An. R., "p. 287, they were a correct statement of the facts of this "case, though each party claimed that there existed additional "facts beyond those stated in said opinion." (R. p. 17.)

This is not a finding of facts, but a statement by the court that that such evidence was offered by the plaintiff, and such proof made by the defendant, as is set forth in the statement, that other facts were before the court by admission of the parties, viz.: the facts in the Rabasse case; and that the existence of other facts than those stated in said opinion *was claimed*. But the court did not find that there were any other facts. If there was any finding of facts they are all contained in said opinion, and this court must grope through it to find them; much as it would have to do, through a report of the evidence. As a finding of facts it is insufficient, and amounts to no more than a general verdict upon which, in the absence of any wrongful admission, or rejection of evidence, the judgment is not subject to review.

Norris vs. Jackson, 9 Wall. 125.
Insurance Company vs. Sea, 21 Wall. 160.
Dirst vs. Morris, 14 Wall. 484.
Insurance Company vs. Folsom, 18 Wall. 237.

But considering the judgment as one upon an agreed statement of facts, the statement thereof in the Rabasse case is probably sufficient to enable this court to review the judgment thereon. The ultimate facts found in that case are the following:

1. That the commissioners named in the act of March 23, 1874, formally organized in April, and published a notice to all holders of parish warrants, scrip or other claims, to present them to the board for inspection, and in June elected one of their number to sign the bonds issued under the provisions of the act.

2. That the commissioners received the scrip, issued the bonds to the amount of over $15,000, and destroyed the scrip.

3. That at no time did the police jury pass an ordinance directing, authorizing, or empowering the issuing of any bonds.

4. That plaintiff's bonds are a part of those thus issued.

There are certain minor facts appearing in the opinion not material here.

Upon these facts the Supreme Court of Louisiana held:

"They were issued illegally. At no time did the police jury "pass an ordinance directing, authorizing, or empowering the "issuing of any bonds. The act of March 23, 1874, empowered "the police jury to issue bonds of the parish, and directed that "a majority of the jurors and a commissioner should sign them, "and required the jury to levy a tax to pay them and the annual "interest. The jury levied the tax, but did not authorize the "bonds. It did not designate which of them should sign the "bonds. The police jury is a political entity, and acts as one "being. When written instruments are to be signed by it, the "president, or some member selected by it, acts for the body. "The legislature had required that a majority should sign these "bonds. A majority was three. The jury should have desig- "nated the three. To hold that any three members of a police "jury can bind the parish by signing the bonds in its name "would be dangerous, to say nothing of its being illegal.

"It is perfectly manifest that the board of commissioners "usurped the functions of the police jury.

* * * * *

"The duty of the commissioners under the legislative act was "confined to the examination of claims and determination of "their validity. They had nothing else to do except select one "of their number to sign the bonds. But they appear to have "received scrip, warrants, etc., and of their own motion ex- "changed bonds for them which had been signed ready for their "use. They did more. They destroyed the scrip. They had "no right to destroy it. They should have examined it, and "have passed upon its validity, and laid their report before the "police jury, who alone had authority to exchange bonds for it."

If the statement of facts prepared by counsel, and found in the record, be considered as the agreed facts upon which the judgment is based, they are more unfavorable to the plaintiff. It

therein appears that these bonds were acquired by the plaintiff from one O'Hern, acting under a power from Thomas A. Cage, one of the commissioners named in the act; that said commissioners kept no record of the claims funded, and destroyed the evidence of the indebtedness as soon as passed on; that they made no list of claims allowed or rejected, nor any report thereof to the police jury; that the police jury never authorized the issuance of the bonds, nor designated the members of their body who should sign the same; that said bonds were never in possession of the police jury, and were not issued by the jury or any of their officers.

It also appears from this statement that O'Hern had full knowledge of the decision in the Rabasse case, and that the plaintiff was to pay him for the bonds when he got a judgment on them in the United States Circuit Court for the eastern district of Louisiana.

It is evident that the plaintiff was not a purchaser in good faith in the ordinary course of business. He, therefore, took the bonds subject to the defenses that existed against them in the hands of O'Hern, who had full knowledge of their invalidity. Even if he were a *bona fide* purchaser, he has paid no part of the price, and being now advised of the fraud it is his duty to refuse payment thereof.

Dresser vs. Missouri R. R., 93 U. S. 92.

The burden of proof was upon him to show that he was a *bona fide* purchaser for value, which he failed to do.

Stewart vs. Lansing, 104 U. S. 505.

II.

It is elementary that municipal corporations are not liable upon bonds unless issued pursuant to authority granted by the legislature. It has been often held that even *bona fide* purchasers of such bonds must take the risk of the official character of those who execute them.

Coler vs. Cleburne, 131 U. S. 162.
Anthony vs. County of Jasper, 101 U. S. 693.
Bissell vs. Spring Valley Township, 110 U. S. 162.
Merchants' Bank vs. Bergen County, 115 U. S. 384.

The plaintiff was bound to examine the records of the police jury and ascertain whether the issue of the bonds had been authorized. It was an essential preliminary to his protection that the authority to issue them should appear.

Merchants' Bank vs. Bergen County, 115 U. S. 384.

There are no recitals in the bonds which estop the parish from denying their validity.

Ibid, p. 391.

On the contrary, the statute under which they purported to be issued was printed upon the back of each bond, and was notice to the plaintiff of the conditions under which alone they could be lawfully issued.

III.

It is conceded that this court is not bound to follow the rule of decision of the state courts upon negotiable coupon bonds. But in so far as the construction of the statute under which the plaintiff's bonds were issued, as to the forms to be pursued and the acts necessary to be done by the police jury to give effect and validity to the bonds, that of the Supreme Court of Louisiana is not only a correct construction, but is one which should be followed by this court, even if it should, in the absence of any construction thereof by the courts of the state, be of a different opinion.

It is not material what the form of action was in which such construction was arrived at It is sufficient that the court entertained jurisdiction and passed upon the questions involving the construction of the statute. But upon the general principles governing negotiable municipal bonds, as well as upon the proper construction of the act under which plaintiff's bonds were issued, the judgment rejecting his demand was correct and should be affirmed.

Respectfully submitted,

J. D. ROUSE,

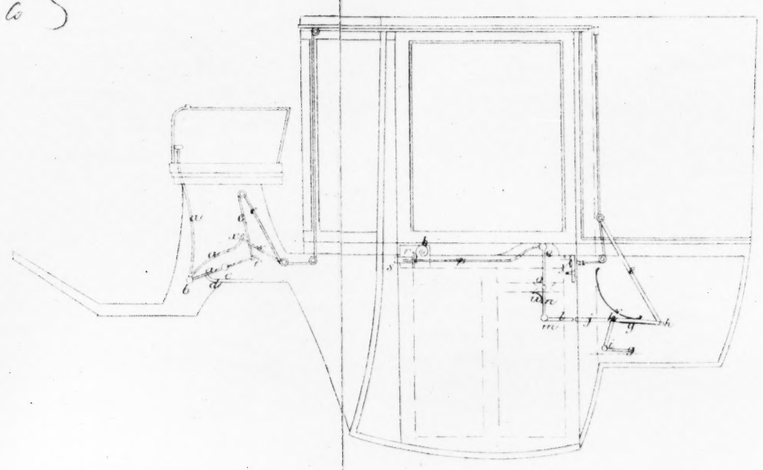
WM. GRANT,

Attorneys for Defendant in Error.

A.D.1872. May 27. N°1602
SMITH'S Provisional Specification.

(1 SHEET)

No 304
Aron
Mfg Co
p. 226

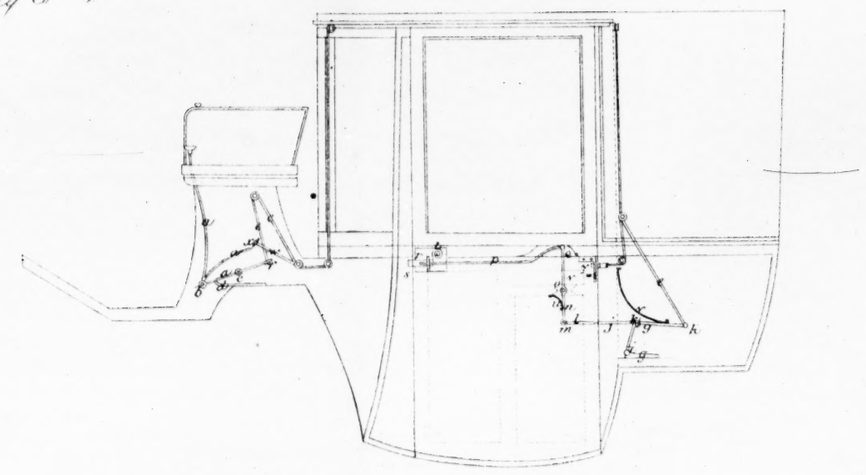


The drawing left with Provisional Specification is not ordered

(1 SHEET)

A.D 1872. May 27. N°1602.
SMITH'S Specification.

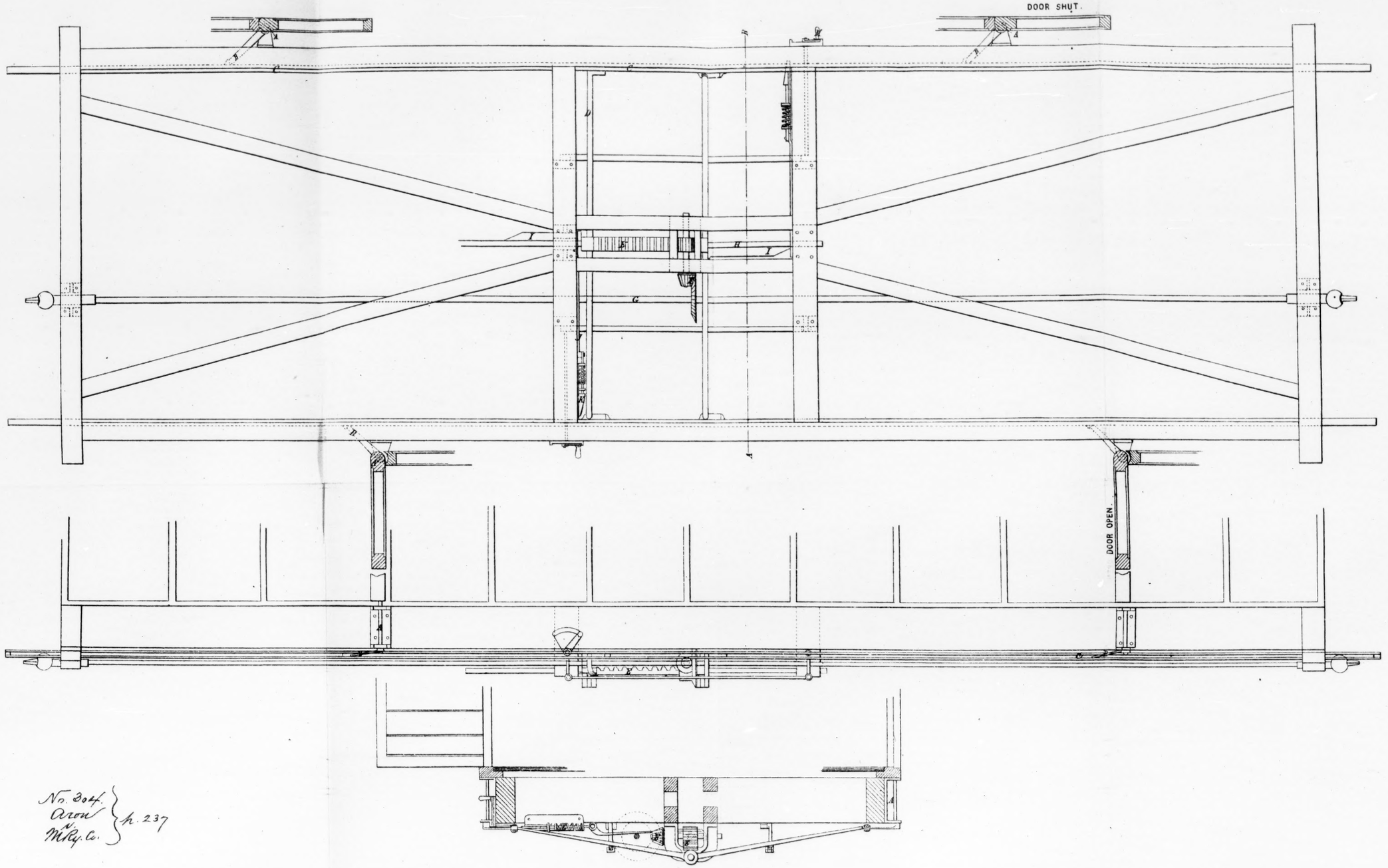
No 3011.
Aron
&
McKy Co
p 227



The titled drawing is not coloured

A.D 1873. Feb 21. N°653.
COOPER'S Specification.

(1 SHEET)



SECTION AT. A B

No. 304.
Aron
M'Ky. C.
p. 237

The filed drawing is not colored.

A.D.1877. March 16. N°1072.
CLARK'S Specification.

(4 SHEETS) SHEET 4.

FIG. 16.

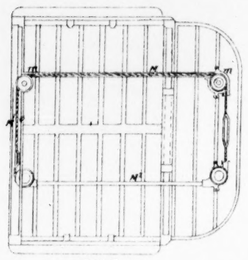


FIG. 17.

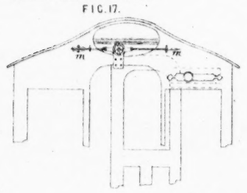


FIG. 12.

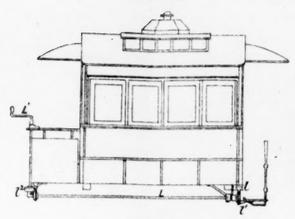


FIG. 13.

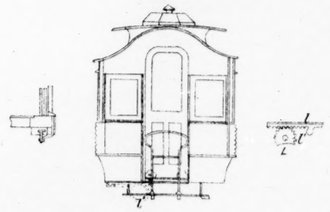


FIG. 21.

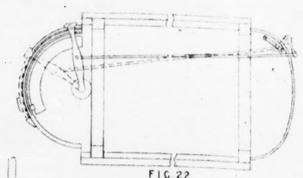


FIG. 22.

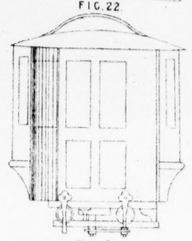
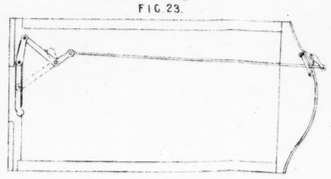


FIG. 23.



No. Bolt Action v. M.Ry Co. } p. 266.

The Red drawing is not coloured

A.D 1877, March 16. N° 1072.
CLARK'S Specification.

(4 SHEETS)
SHEET 3

FIG.14

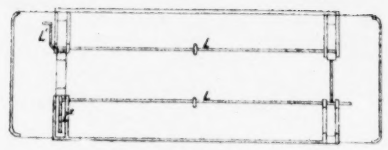


FIG.15.

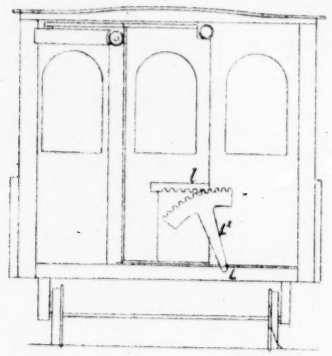


FIG 10.

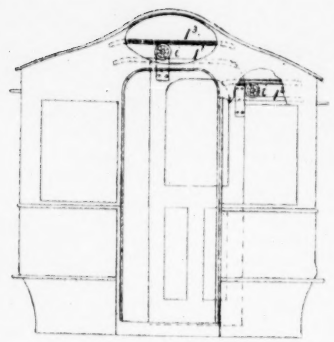


FIG 24.

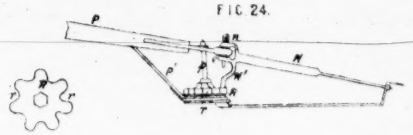


FIG.18.

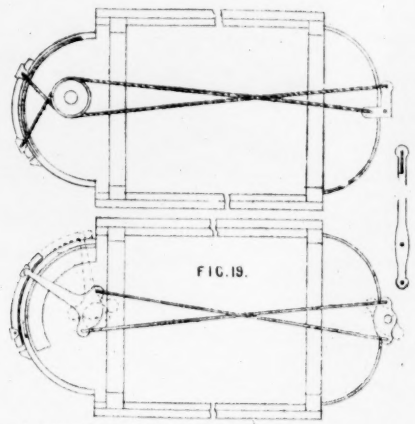


FIG.19.

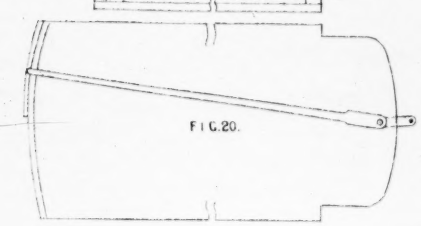


FIG.20.

No. 3014.
aron
&
Mayo.
} p. 265

The first drawing is not coloured

AD 1872 March 16. N°1072.
CLARK'S SPECIFICATION.

FIG. 2.

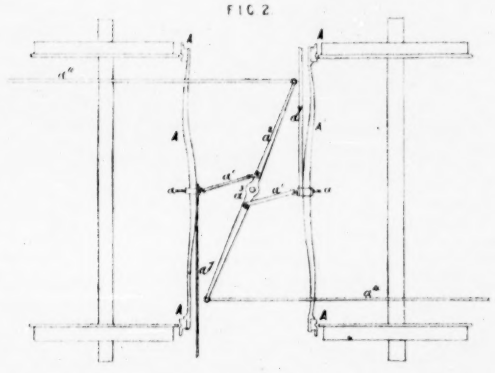


FIG. 6.

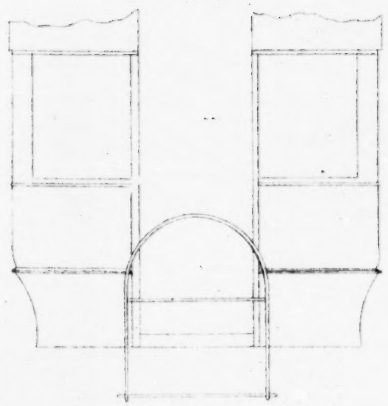


FIG. 11.

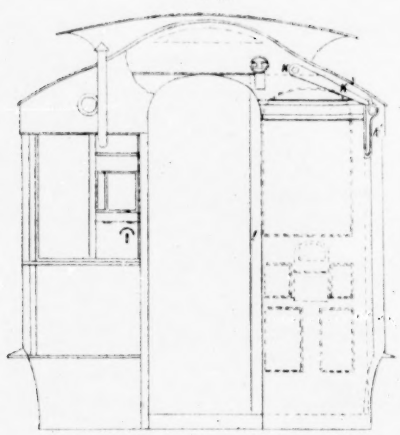


FIG. 4.

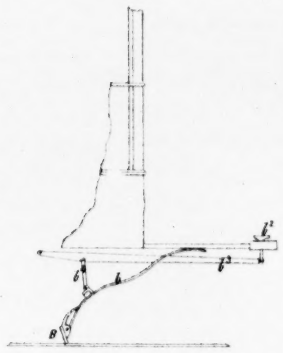


FIG. 7.

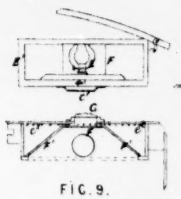


FIG. 8

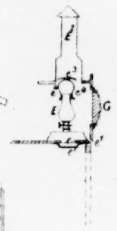


FIG. 9.

No. 3 of
Aron
v.
McKay Co

} fo 2 C.A.

The red drawing is not enrolled.

A.D. 1877, March 16. N° 1072.
CLARK'S Specification.

(4 Sheets) Sheet 1

FIG. 1.

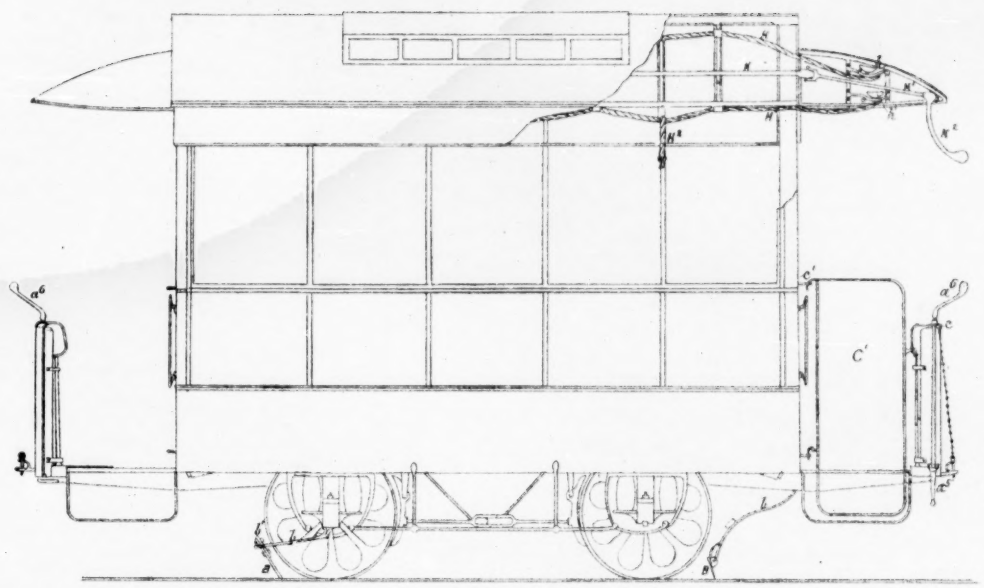
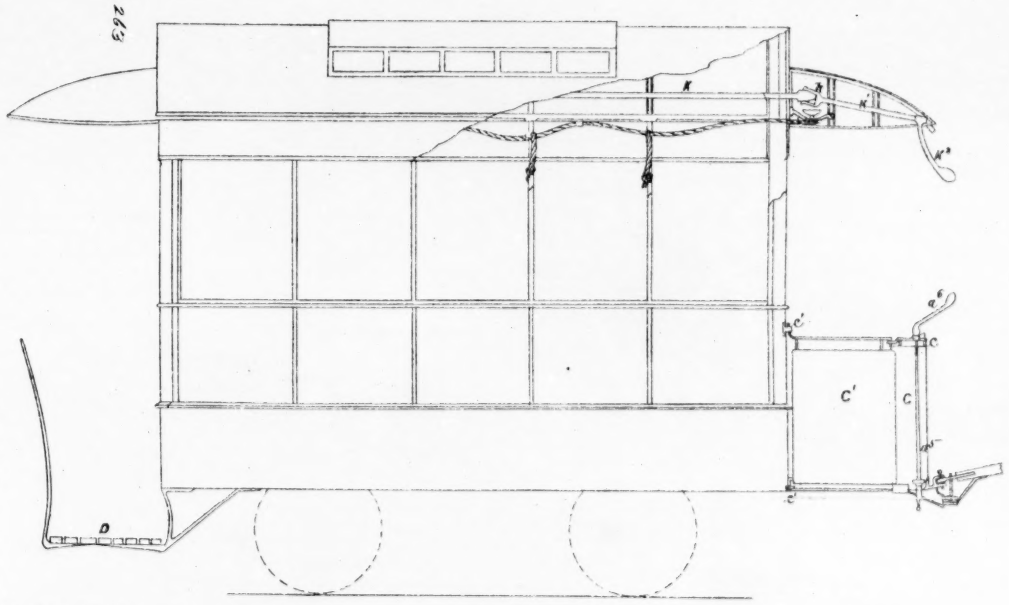


FIG. 3.

No. 1072 Class 6 Mill. C. A.D. 1877

FIG. 5.



The filed drawing is not colored.

(Model.)

R. FLOCKE.

Lock for Traveling Bags.

No. 238,037. Patented Feb. 22, 1881.

Fig. 1.

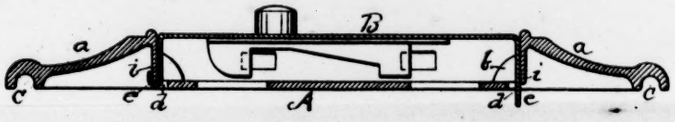


Fig. 2.

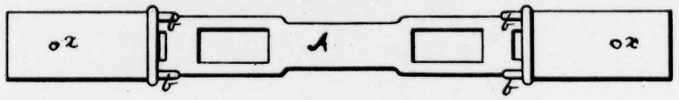
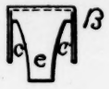


Fig. 3.



Attest:

Edw. N. Keasbey

Geo. M. Titus

Inventor:

Robert Flocke

By H. A. West

his atty

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

G. BERNHEIM.

Locks for Bags, &c.

No. 163,629. Patented May 25, 1875.

Fig. 1

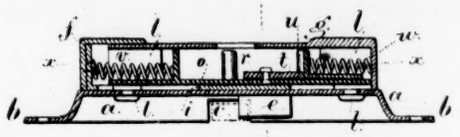


Fig. 2.

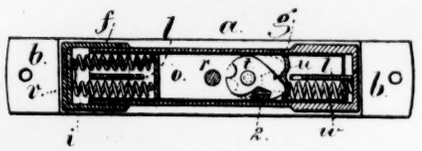


Fig. 3.

Witnesses.

Chas. H. Smith

Harold Sewell

Inventor

Gustave Bernheim

per Lemuel W. Serrell

Atty.

THE GRAPHIC CO. PHOTO-LITH. 39 & 41 PARK PLACE, N.Y.

J. W. LIEB.

HANDLES FOR TRAVELING-BAGS, SATCHELS, &c.

No. 194,556. Patented Aug. 28, 1877.

Fig. 1.

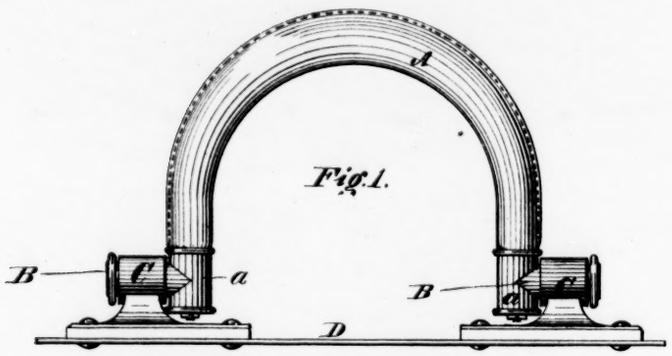


Fig. 2.

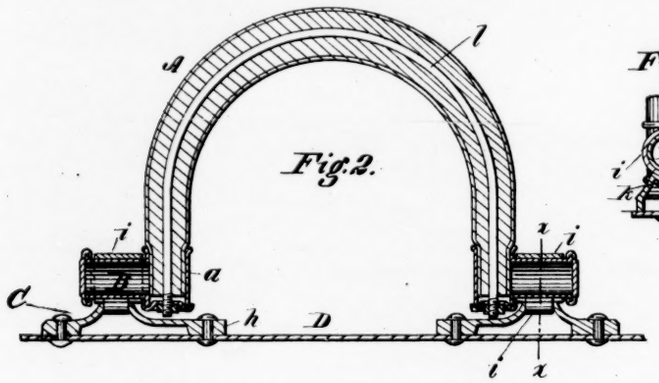
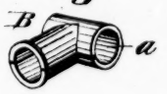


Fig. 3.

Fig. 4.

Fig. 5.

Fig. 6.



Witnesses:

Donn B. Tentchell

Walter A. Dodge

Inventor;

J. W. Lieb.

By his attys.

Dodger Son.

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

J. W. LIEB.

HANDLES FOR TRAVELING-BAGS, &c.

No. 194,555. Patented Aug. 28, 1877.

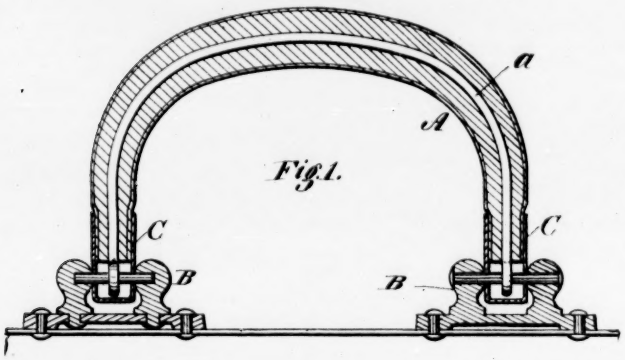


Fig. 1.

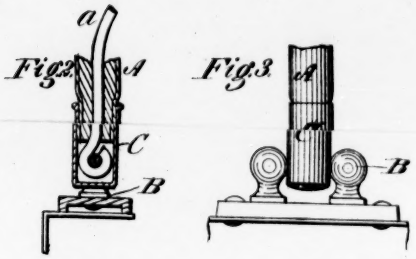


Fig. 2.

Fig. 3.

Fig. 5.

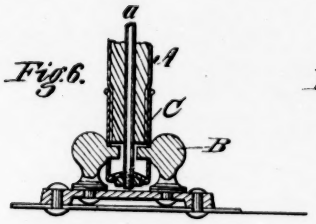


Fig. 6.

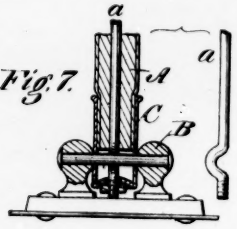


Fig. 7.

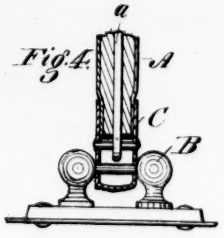


Fig. 4.

Witnesses:

Donn B. Tuttle

Will W. Dodge

Inventor:

J. W. Lieb.

By his attys.

Dodge & Son.

No. 315
Roemer
v
Neumann
et al.
} P 335.

Ornamental Design.

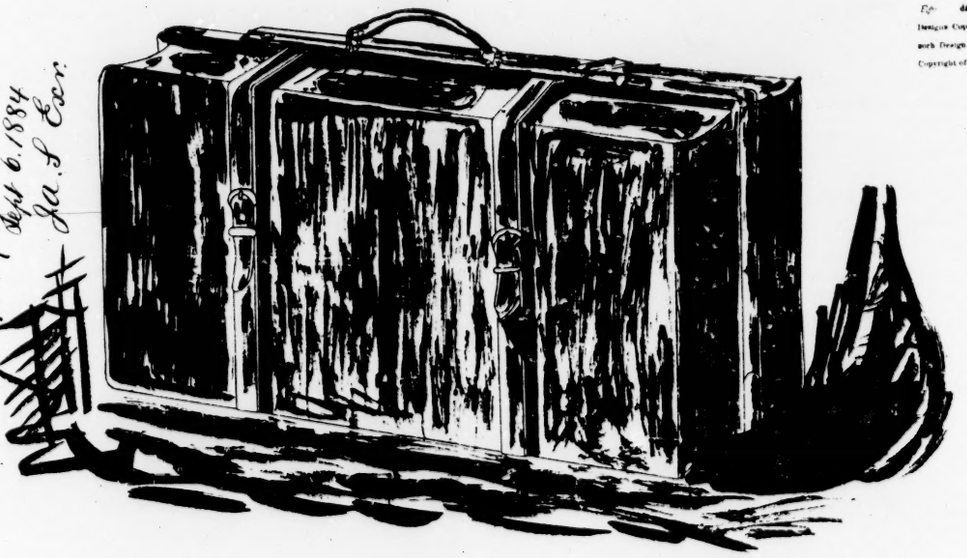
"THE COMBINED HANDLE PLATE"

335

Class 1

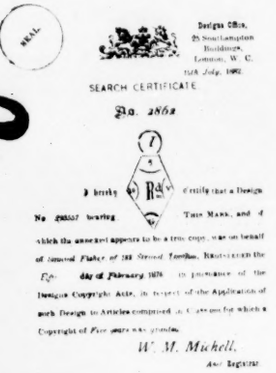
Samuel Fisher of 188 Strand
Proprietor.

298207



Roemer v. Simon
& Defendants Exhibit Fisher Design
298207 May 24th 1883
Pltffs Exh. Fisher Design
298,207 Sept 6 1884
Jas. S Exr.

Roemer
vs
Neumann



Designs Office,
25 Southampton
Buildings,
London, W. C.
15th July, 1882.

SEARCH CERTIFICATE

No. 2862

I hereby certify that a Design
No 298207 bearing Trade Mark, and of
which the annexed appears to be a true copy, was on behalf
of Samuel Fisher of 188 Strand Londton, Registered the
5th day of February 1884 in pursuance of the
Designs Copyright Acts, in respect of the Application of
such Design to Articles comprised in Class 1 for which a
Copyright of Five years was granted.

W. M. Michell,
Asst Registrar

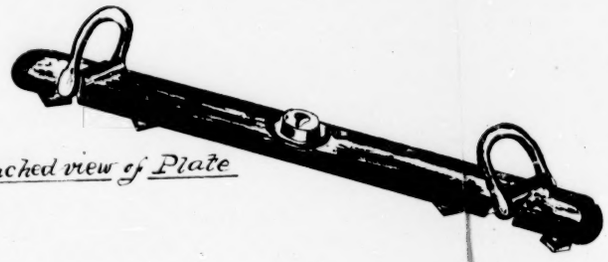
Ornamental Design.

THE UNITED BAG PLATE

Samuel Fisher of 188 Strand. London,
Proprietor.

Class 1.

293557



Detached view of Plate

View of Plate applied to a Bag.

Design Office,
25 Southampton Buildings,
London, W. C.
15th July, 1882.

SEARCH CERTIFICATE

No. 2663.

I hereby certify that a Design No. 293557 bearing Trade Mark, and of which the annexed appears to be a true copy, was on behalf of Samuel Fisher of 188 Strand London, Registered the Fourteenth day of August 1875 in pursuance of the Designs Copyright Acts, in respect of the Application of such Design to Articles comprised in Class 20 for which a Copyright of Five years was granted.

W. M. Michell,
Asst. Registrar.

Rosmer v Sinnes
Defendants Exhibit Fisher Design
293557 - May 24. 1883
Hy Gr Esqr

Rosmer v Neumann
Apld Exh Fisher Design
Sept: 6 1884
J A. L. Esqr
293557

No. 315
Rosmer
v.
Neumann
& al.
} f. 333

(1 SHEET)

A. D. 1856. JAN. 18. N° 136.

SCHLOSS SPECIFICATION.

FIG. 5.

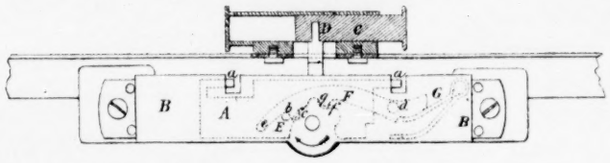


FIG. 1.

FIG. 2.

FIG. 6.

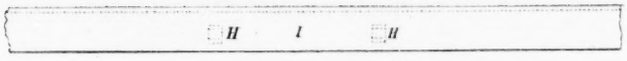


FIG. 3.

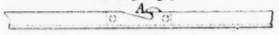


FIG. 4.

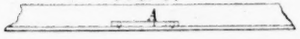
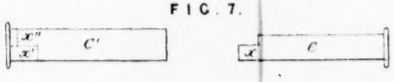
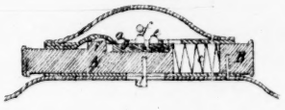


FIG. 7.



No. 315.
Rorner
v.
Neumann
et al
} p. 397

FIG. 8.



The filed drawing is not colored.